

EXHIBIT 11

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4 New York State Supreme Court
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8 July 22, 2011

9 To:

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11 Attorneys at Law
12 1251 Avenue of the Americas, 18th Floor
13 New York, New York 10022

14 Attention: Amiad M. Kushner

15 TITLE OF ACTION: Libertyview
16 INDEX CASE NO: 651998/11

17 DATE OF PROCEEDING: July 21, 2011

18 PAGES: 22

19 For daily copy transcript in the above-entitled case.

20 The amount below represents your cost of the transcript.

21 Total Due and owing: \$170.50

22 ***Please Remit***

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: TRIAL TERM PART 49

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LIBERTYVIEW CREDIT OPPORTUNITIES FUND., L.P.,
LIBERTYVIEW CREDIT SELECT FUND, L.P.,
LIBERTYVIEW SPECIAL OPPORTUNITIES FUND, L.P.,
LIBERTYVIEW FUNDS, L.P. LIBERTYVIEW SPECIAL
OPPORTUNITIES FUND II, L/P.,

Plaintiffs,

- against -

DYNEGY HOLDINGS, INC.,,

Defendant.

- - - - - X

Index No. 651998/11

July 21, 2011
60 Centre Street
New York, New York 10007

B E F O R E: THE HONORABLE O. PETER SHERWOOD, Justice.

A P P E A R A N C E S:

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Terry-Ann Volberg, CSR, CRR
Official Court Reporter.

Terry-Ann Volberg, Official Court Reporter, CSR, CRR

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2 THE CLERK: Libertyview Credit Opportunities v.
3 Dynegy Holdings, Index Number 651998/2011.

4 THE COURT: Counsel, your appearances, please.

5 MS. SADIGHI: Good afternoon, your Honor.

6 Sheila Sadighi of Lowenstein Sandler for
7 plaintiffs Libertyview Funds here together with my
8 colleague, Amiad Kushner.

12 THE COURT: Preliminarily, welcome. I am happy
13 to have you participate even though the motion has not
14 reached my desk yet, it has not been signed.

15 MS. SADIGHI: I appreciate that, your Honor.
16 Thank you.

17 MR. KURTZ: Good afternoon, your Honor. Glenn
18 Kurtz of White & Case. I am here today on behalf of the
19 defendant Dynegy Holdings Inc.

20 THE COURT: This was just handed to me. I must
21 tell you I have not read it. You will have to educate me.

22 MS. SADIGHI: That's fine, your Honor.

23 First and foremost, I would like to clarify the
24 relief we are seeking today. It's very limited. All the
25 plaintiffs are asking for today is that your Honor please
26 enter a hearing date and an expedited briefing schedule

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for our application for a temporary restraining order pending a preliminary injunction motion. So that's all we are seeking today, but we will be back if your Honor so enters the order to seek next week a temporary restraining order pending our motion for a preliminary injunction of the defendant Dynegy Holdings Inc. or DHI's proposed findings and transaction.

In a nutshell, your Honor, our clients are funds that own debt that is guaranteed by DHI. The plaintiffs are third-party beneficiaries under a guaranty given by DHI to ensure that their debt liens are paid. As part of the guaranty that DHI has given it affirmatively covenanted that it would not transfer or divest itself of the assets that support the guaranty unless the guaranty follows the assets to the new transferee.

DHI is a holding company. As such it conducts its primary business and all of its assets are the operations, the cash flows of its operating power plant facilities which are owned through a structure of direct and indirect subsidiaries. And as a result DHI, when it was agreeing to provide credit support to this debt, being the guarantor of this debt, held itself out on the basis of its consolidated operations, its consolidated financials, otherwise as a guarantor its value is effectively nothing because it's a shell company.

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So our clients, as purchasers of the debt guaranteed by DHI, bought into this debt based in large part upon the credit support provided through this guaranty under which DHI said it would basically stay the same guarantor it was to the extent that it's able to control that.

So we are here asking to enjoin a transaction that in our view violates that affirmative covenant under the guaranty because what DHI has said it's going to do in a proposed restructuring that will close next week according to its current schedule, is that it is taking the real assets of the company, the only ones that generate any revenues that contribute all the upstream cash flows to DHI, our guarantor, it's taking them through a series of very unbelievably complex restructuring transactions. It's going to move them into these bankruptcy remote ringfenced entities where they won't be able to be touched by DHI's creditors.

So that's what it's proposing.

In connection with that transaction it's not only going to isolate the only real assets that support our guaranty, but it is also causing the subsidiaries to restrict their own ability to send those cash flows back upstream to DHI.

So DHI is saying two things. It's saying,

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number one, yes, we have told you every year that all of our operating revenues are contributed by the subsidiaries. You know, last year they contributed \$923 million. We rely on that money. That's how we pay our debts and obligations. We are going to limit them so they can't possibly upstream more than \$225 million if they even produce that much.

And based on the public filings that DHI put out there it seems pretty clear to us that even if those subsidiaries produce that amount of money it's not going to be sufficient to cover DHI's debt.

THE COURT: Who is the borrower of the debt that Libertyview Credit Opportunities holds? One of DHI's subsidiaries?

MS. SADIGHI: The certificate -- the plaintiffs own what are referred to as pass-through trust certificates. So they own certificates in a trust that holds notes given by owner-lessors related to this 2001 leverage lease transaction.

Essentially DHI bought six power plant facilities in New York, and in order to get long-term financing for the asset acquisition it structured this giant asset backed sale lease backed transaction. So the way that that is structured is the DHI subsidiaries bought the power plants, they then sold them to the

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2 owner-lessors.

3 THE COURT: To the trust, essentially?

4 MS. SADIGHI: Right. So the money --

5 THE COURT: And they leased back the power
6 plants from the trusts?

7 MS. SADIGHI: That's exactly right, your Honor.

8 They pay their lease payments. It's the lease payments
9 made by --

10 THE COURT: What is it that is being transferred
11 here?

12 MS. SADIGHI: So what's being -- DHI's assets as
13 a holding company, it's assets are, as it said, all of its
14 operating revenues, all of the money, all of the real
15 assets that are at the operating level. So what it's
16 doing is it's transferring outside of its reach.

17 This is the argument that we say we need the
18 court to weigh in on because we say DHI is slicing the
19 baloney too thin. On the one hand it holds itself out and
20 says when you look at DHI as a guarantor and you are
21 trying to assess whether or not it is creditworthy, and
22 DHI was trying to induce certificate holders to rely on
23 its creditworthiness because it knew this --

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2 MS. SADIGHI: There are lease --

3 THE COURT: DHI is merely a guarantor of that
4 debt. Do I have that right?

5 MS. SADIGHI: DHI is a guarantor of that debt,
6 and DHI, the DHI entity that supports that debt sits at
7 the top of this consolidated family of subsidiaries. And
8 so the assets -- what DHI said is we will guaranty your
9 debt, but, you know, putting that debt aside when you just
10 try to decide whether it is a good credit risk, whether we
11 will be able to make good on the guaranty if the lessees
12 default on the leases, look at what we do. Here is what
13 we do. Here are our assets. Our assets are cash.

14 THE COURT: I think I understand that.

19 That's DHI.

20 And so my understanding from you, I have not
21 read any of the papers, is that the borrower owns these
22 power plants that are leased by, that are leased by the
23 operating companies that are controlled by DHI; is that
24 right?

25 MS. SADIGHI: That's right, but they have been
26 devalued.

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6 MS. SADIGHI: It is devaluing the guaranty of
7 the loan.

8 THE COURT: I get that.

9 MS. SADIGHI: But that's all we are trying to
10 avoid, sir.

11 THE COURT: I get that too.

12 I am trying to understand whether the loan
13 itself is being impaired in anyway.

14 MS. SADIGHI: The loan itself is being impaired
15 to the extent that right now DHI has all of these assets
16 directly underneath it. It has basically 14, I think 17
17 main power generator plants. One of them is being
18 shuttered, two of them are the subject of our eleven lease
19 transactions.

THE COURT: That will continue in operation?

21 MS. SADIGHI: Well, who knows, because --

22 THE COURT: As of right now you have not given
23 any notice that they will be shuttered.

24 MS. SADIGHI: We haven't although the clear
25 understanding on the street and that is reflected in the
26 effectiveness of this proposed transaction on the trading

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2 price of our debt is clearly an understanding that the
3 transaction will effect it because the facilities that are
4 the subject of the lease transaction, the funds are
5 certificates, they are being left out of this
6 restructuring deliberately. DHI's counsel, restructuring
7 counsel said on a lenders call next week, those facilities
8 that are out there, we are leaving them outside of the
9 ringfence because they provide no collateral, they provide
10 no value to the collateral package. They have listed them
11 as substantially impaired. They took a writeoff on them
12 years ago. They are not doing anything.

13 So it is already a credit risk and already
14 likely that we need to have this credit support by DHI
15 under the guaranty and it will be even more so because
16 it's basically being strangled. It's like, you know, a
17 little bit -- they are taking all of the healthy, good
18 assets, and they are saying we have 14 great power plants.
19 We can get value off of those so we will move those away
20 from you, certificate holders, my clients, so that they
21 don't have to support the guaranty because it's a burden
22 to support these two nonperforming assets. We are leaving
23 those out in the cold. They are useless.

24 THE COURT: Counsel, I really think I understand
25 that part of it, all that you have been waxing eloquently
26 on. I got that early on, but I am still struggling for an

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2 answer to my question. Somehow, for some reason or other,
3 either I am not following you or you are evading my
4 question. It's one of the two.

5 MS. SADIGHI: I am not trying to evade the
6 questions. So let me make sure I understand -- you are
7 asking the question: What assets is DHI as guarantor
8 transferring?

17 Do you understand me?

18 MS. SADIGHI: I believe so.

19 The loans that are evidenced by our clients debt
20 were used to purchase the two power plants that are the
21 nonperforming assets that DHI is leaving out of the
22 restructure.

23 THE COURT: Who is paying back the loan now?

24 MS. SADIGHI: Currently the lessees of the
25 facilities are still paying the lease obligations.

26 THE COURT: So they are performing?

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2 MS. SADIGHIY: They are performing, yes, but
3 they don't have to be in default for us to have a right to
4 enforce the guaranty.

5 THE COURT: I get that.

6 MS. SADIGHI: All right.

7 THE COURT: I really understand that you are
8 going after the guarantor.

9 MS. SADIGHI: Yes.

10 THE COURT: I said that to you how many times?
11 How many times have I told that you?

12 MR. KUSHNER: Several times.

13 THE COURT: You don't have to answer.

15 So you want to, you want to come back in a short
16 time to get a TRO. I get it.

17 MS. SADIGHI: Yes, your Honor. We would like to
18 come back next week, give DHI an opportunity to put in
19 opposition papers for us to reply and then have your Honor
20 hear the TRO.

21 THE COURT: Let me hear from DHI.

22 MR. KURTZ: Thank you, your Honor.

23 Glenn Kurtz.

24 I would like to cover three points, I think, and
25 I would like to start just with some underlying facts
26 which I don't think were accurately presented to your

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2 Honor. And I think you asked some questions that go to
3 the heart of this.

4 But let me focus for a minute on the
5 reorganization itself, the restructuring, where it's been
6 mischaracterized that DHI is a guarantor, has some hard
7 assets and generating assets like plants and intends to
8 get rid of them in ringfencing. That's simply not the
9 case. DHI has nothing more than equity in a series of
10 other companies. And there is going to be some movement
11 of companies to separate out coal assets from gas assets,
12 coal generated energy from gas generated energy in order
13 to make two financeable entities and some other
14 complicated and important matters.

At the end of today, before any restructuring is happening, DHI has under it a series of companies and under those series of companies are other companies and ultimately revenue generating assets. When the restructuring closes DHI will have a series of companies under it, and they will have a series of companies under them that will hold the very same assets. So there is no change in the credit risk whatsoever.

23 THE COURT: Who is the guarantor?

24 MR. KURTZ: The quarantor is DHI.

THE COURT: DHI.

26 You are saying that none of these assets are

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2 going anywhere?

3 MR. KURTZ: No.

10 MS. SADIGHI: Bankruptcy remote ringfenced
11 assets.

12 THE COURT: That's what I heard her say. I am
13 not so sure you responded to that.

14 MR. KURTZ: Let me respond to that.

15 We know, what I did say, was that all of the
16 assets are still there.

In terms of ringfencing, making an entity
bankruptcy remote, that does not do anything negative to
its value. As it stands today DHI merely owns equity in
companies that own or have equity in other companies that
own the plants themselves. The only way you could
monetize -- those are not responsible, those separate
companies are not responsible for repaying the debt here
in issue. The only way you could get to those companies
would be to get a judgment in event of default, and there
is no default, there is no contemplated default. You

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would get a default, go to the guarantor. There is no default, no contemplated default or inability to pay the debts as they come due. Then you go to the guarantor, get a judgment and then you have to execute.

Now what you have to execute against is their assets which would include equity in entities. The value of that equity would be no different. It may be increased to the extent that it was bankruptcy remote and ringfenced because that would ensure that there was unnecessary cash infusions made.

By the way, bankruptcy remote and ringfencing, that means there is an independent director that makes determinations as to equity dividends outside of a 225 million-dollar dividend that's going to be paid. Capital contributions will be made each and every year. The way it will work, technically \$400 million will be put into DHI. DHI will obtain another \$225 million a year from the subsidiaries. And DHI will have a 20 percent interest that's saleable in an entity that's worth, we are talking about \$3 billion. It will have more than sufficient assets to pay these debts when they become due.

More significantly, it will have the same assets as today, and, more significantly, there is nothing about the value of the assets at DHI today that will change its only equity. If you want to foreclose on equity, you come

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2 to court to do so and that equity has a value. You don't
3 get to just take money out of -- say we all had equity in
4 some corporation. We don't get to go to the corporation
5 and go into the bank accounts. All you can do is trade on
6 your equity.

7 That's the background.

Let me go through some basic facts.

16 The plaintiffs are suing on a guaranty. They
17 are not a party to the guaranty.

18 They say they are a third-party beneficiary.

19 THE COURT: Hold on.

20 MR. KURTZ: The guaranty, your Honor, is at
21 Exhibit A of the papers that have being submitted by the
22 plaintiffs.

23 THE COURT: Exhibit A, you say?

24 MR. KURTZ: It may be worthwhile for me to pause
25 for a moment to note that these are very customary and
26 complicated indenture documents. The way these work is

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that you have a trustee who is able to bring a lawsuit, seek remedies with respect to breaches. Individual holders of the debt have no such right and that is so an individual holder who simply wants to receive a tip is unable to highjack the facility and cause litigation at everyone's expense and also with a fee shift.

That's how it starts.

Of course they are not suing under the actual pass-through indenture which has the prohibition on bringing the lawsuit. What they are suing on is a guaranty that's related to that document.

Now, we go to the guaranty and we see that it is not in favor --

THE COURT: Wait a minute.

Is there a provision -- you have Exhibit A which says quaranty. Is that where I am supposed to be?

MR. KURTZ: I am in A.

THE COURT: I wanted to look at the indenture
first

MR. KURTZ: I am not sure --

MS. SADIGHT: That's not an exhibit.

MR. KURTZ: I am not sure that was presented to your Honor although we will certainly be submitting it in opposition.

THE COURT: Is there a provision of the guaranty

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2 I need to look at?

3 MR. KURTZ: Start with the first page.

16 So this is not a guaranty in favor of the
17 plaintiffs. This is a guaranty in favor of the trustee,
18 the party that's permitted to bring a lawsuit subject to
19 getting a majority of people to -- this is not where
20 thousands of individual certificate holders get to take
21 action under the document. That's why you pay a trustee
22 to act. It's the trustee that takes the actions that the
23 trustee deems appropriate with some exceptions if the
24 trustee declines to take action.

25 You then go, your Honor, to Section 7.1 which
26 tells you who it is that can sue for any breach of the

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guaranty. That, of course, as one would expect includes the guaranty party and only the guaranty party.

Now these are the provisions, your Honor, that tell you who has the right to bring a claim for a purported violation of the guaranty, and that wasn't brought to your attention, but the only people who have the right are the guaranty people which includes the trustee under the pass-through trust we have been talking about. Certificate holders with very small holdings cannot come in here and sue under these instruments.

There is an argument that's being made, you will see it in the papers, that there are third-party beneficiaries, but the law, and it's from the New York Court of Appeals, in fact, plaintiffs rely on the very same case we would rely on, tells you, it is under Fourth Ocean Putnam Corp., 66 N.Y.2d 38, and that tells you, at jump cite 45, that you're a third-party beneficiary with a right to enforce a contract where no other party can recover or the language of the contract otherwise and clearly evidences an intent to permit enforcement.

Our contract has others that can enforce, the right parties, and you don't become -- by being somebody who gets a benefit from a document you have to take it as it comes which has enforcement rights and limitations. If you became a third-party beneficiary of a nonrecourse note

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2 you couldn't say I also want recourse. You take them as
3 it comes. This is how it comes, your Honor. So there is
4 absolutely no standing to pursue a case here.

5 The third point I wanted to raise briefly is the
6 other provision of the guaranty that is at issue is
7 Section 4.2 --

11 MR. KURTZ: Before that happens, it prevents --

12 THE COURT: 4.2?

13 MR. KURTZ: Yes. You can look at it at your
14 leisure, but that's the provision and that's not changing.
15 As I have already mentioned, all the same assets.

19 THE COURT: Let me ask you this question.

20 We really are out of time. I can't keep the
21 staff beyond 5:00 o'clock. You have been reading the
22 papers. You understand that.

23 So why is it that the court should not allow
24 them the opportunity, this expedited hearing, where I can
25 hear your arguments in greater detail?

26 We are here at the end of the day and they are

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2 only here asking for a briefing schedule. What is the
3 consequence of the court granting that relief?

4 MR. KURTZ: Your Honor, only the time that it
5 takes to go through an expedited briefing and argument
6 when there is absolutely no standing or threshold issue.

7 I am not sure in my whole career I have objected
8 to timing, although, on a side note, I rather the timing
9 be pushed 24 hours in each case.

10 THE COURT: If you are so sure of this, why
11 don't you then agree to a briefing schedule focused on a
12 very limited issue which is standing?

13 You don't have to spend -- I hear you when you
14 say, Judge, we don't have to get past -- I don't know
15 enough of the law, about the law because it requires me to
16 know not only the law, but, more importantly, your
17 documents. I have got to go through them. I have not had
18 a chance to go through them. By setting up a briefing
19 schedule limited to the question of standing I can come up
20 to speed and have a reasonable conversation with both
21 sides.

22 So why don't we limit the motion to that unless
23 you have some big reason why you can't do it.

24 MS. SADIGHI: It would depend on the timing,
25 your Honor, because if they want to oppose and brief the
26 issue on standing they are going to put in their

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opposition tomorrow and we put our reply in Monday
morning, and that's decided Monday, because the problem
is --

5

THE COURT: I understand that.

6

MS. SADIGHI: Your Honor, I am sensitive to the
time so I won't go through the issues that I believe are
incorrect.

9

THE COURT: Do you have any problem doing that
quick turnaround given what we are talking about?

11

MR. KURTZ: I am happy to proceed in that
fashion.

13

THE COURT: Fine. Let's do that.

14

What time tomorrow do you want?

15

MR. KURTZ: 6:00 o'clock.

16

(Continued on next page for certification.)

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2 THE COURT: 6:00 o'clock.

3 And then Monday morning first thing?

4 MS. SADIGHI: Nine a.m. Monday morning. If we
5 are heard --

6 THE COURT: Contact my office tomorrow. I can
7 give you a time Monday afternoon, probably.

8 MS. SADIGHI: Thank you, your Honor.

9 MR. KURTZ: Thank you, your Honor.

10 ★ ★ ★

11 C E R T I F I C A T E
12 I, Terry-Ann Volberg, C.S.R., an official court reporter of the
13 State of New York, do hereby certify that the foregoing is a
14 true and accurate transcript of my stenographic notes.

Terry-Anne Volberg
Terry-Anne Volberg, CSR, QRR
Official Court Reporter

Tonya Ann Volberg Official Count Reportant CCRB CCRB